

KERALA HIGH COURT

Union of India

Vs

M. Thankaraj

(K Usha, C.J. G Sivarajan, J.)

12.08.1988

JUDGMENT

K Usha, C.J.

1. These appeals are directed against Judgments of the Railway Claim Tribunal,Ernakulam Bench granting compensation for death or personal injuries of passengers under the provisions of the Railways Act, 1989 read with Rules issued thereunder. Except M.F.A. No. 915/98 all the other appeals are at the Instance of the Railway administration. The common question of law that arises in all these appeals is whether in respect of death happened or injury sustained before the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997 came into force the enhanced rate of compensation under the Amended Rules can be made applicable. The Railway Claims Tribunal, Ernakulam Bench granted compensation in O.A. No. 137/97, O.A. No. 24/96, O.A. No. 142/97, O.A. No. 136/97, O.A. No. 124 of 1997, T.A. No. 56/97, O.A. No. 93/97, O.A. No. 94/97 and O.A. No. 3/98 by applying the Amended Rules. These Judgments are challenged by the Railway administration in M.F.A. Nos. 816, 839, 1249, 1265, 1282, 1284, 1292, 1293 and 1320 of 1998. In T.A. No. 259/96 the Tribunal applied unamended provisions and therefore the judgment is challenged at the instance of the applicants. The contentions are raised in the appeals by the Railway administration on the merits of the claim also. We will first consider the common question of law and thereafter deal with the factual contentions raised in each case separately.

2. Section 124 of the Railways Act, 1989 provides for liability of Railway administration for loss occasioned by the death of a passenger, dying as a result of the railway accede and for personal injury and loss, of property whether or not there has been any wrongful act, neglect or default on the part of the Railway administration. Section 82-A of the Indian Railways Act, 1980 is the forerunner of this provision. The compensation payable by the Railway administration under Section 124 is "to such extent as may be prescribed" and to that extent only. The amount of compensation thus payable is specified in Schedule II of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The Railways (Amendment) Act, 1994 which came into force with effect from 1-8-1994 brought in amendment to Section 123 by introducing a new concept of 'untoward incident.' As a consequence a new section as Section 124-A was also introduced after Section 124 of the Act. The term "accident" is defined under Section 123 as an accident of the nature described in Section 124. An accident described in Section 124 is one

which occurs in the course of working a railway either by a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers. By the 1994 amendment Clause (c) was added to Section 123 which reads as follows :--

"(c) 'untoward incident' means-

(i) the commission of a terrorist act within the meaning of sub-Section (1) of Section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987; or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-put or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or (2) the accidental falling of any passenger from a train carrying passengers.'" ,,, A provision similar to Section 124 Is provided under Section 124-A making the railway administration liable for loss occasioned by the death of a passenger as a result of an 'untoward incident occurring in the course of working a railway and for personal injury of the passenger whether or not there has been any wrongful act, neglect or default on the part of the railway administration. For the purposes of this section "passenger" includes, a railway servant on duty as in the case of Section 124. But this section would take in also a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident. The quantum of compensation is prescribed by the same rules viz., Railway Accidents and Untoward Incidents (Compensation) Rules, 1990.

3. Rule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 provides that the amount of compensation payable in respect of death or injuries shall be as specified in the schedule. These Rules are issued under Section 129 of the Railways Act, 1989 read with Section 22 of the General Clauses Act (10 of 1897) and In supersession of the Railway Accident (Compensation) Rules, 1989. The Rules came into force with effect from 1 -8-1994. The Railway Accident (Compensation) Rules, 1989 which were issued in exercise of the powers conferred by Section 82-A of the Indian Railways Act, 1890 contained more or less similar provisions as in the 1990 Rules which came into force on 1-8-1994. But the quantum of compensation prescribed under the Schedule was different. For example:-- Under Part I to the schedule for death the amount of compensation prescribed under the 1989 Rules was only Rs. 1.00.000/- which was enhanced to Rs. 2.00.000/- in the 1990 Rules. Similar enhancement can be noticed against other items in Part II also. Subsequently, the Railway Accidents (Compensation) Rules, 1990 was further amended by Railway Accidents (Compensation)

Amendment Rules, 1994 mainly for the purpose of taking in the compensation in respect of untoward incidents also. But we find that there was no enhancement of the quantum of compensation from what was provided in the schedule under 1990 Rules. Three years later the Rules underwent a further amendment by Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997. By this amendment only change brought in was enhancement of the quantum of compensation. The amount was doubled against each item given under Parts I and II. The amount of Rs. 2,00,000/- provided under sub-Rule (2) of Rule 3 as the amount of compensation payable for Injury not specified in Part II or III of the schedule, but which in the opinion of the Claims Tribunal is such as to deprive a person of all capacity to do any work was enhanced to Rs. 4,00,000/-. By an amendment to the second proviso to sub-Rule (3) of Rule 3 where a limitation for total compensation in respect of injuries not specified in the schedule or referred in sub-Rule (2) was enhanced from Rs. 40,000/- to Rs. 80,000/-. Rule 4 provides for a limit of compensation in respect of any one person. This limit was amended and enhanced from Rs. 2,00,000/- to Rs. 4,00,000/-.

4. Sub-Rule (2) of Rule 1 of the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997 provides that those Rules shall come into force on the 1st day of November, 1997. The common question to be considered in these appeals is whether while fixing the liability of the Railway administration in respect of an accident or untoward incident occurred before 1-11-1997 enhanced compensation provided by the amendment can be made applicable, only for the reason that the adjudication by the Tribunal was after the 1997 Amendment came into force.

5. The learned standing counsel for the Railway administration contended that the quantum of compensation has to be assessed on the basis of the Rule that was available at the time when the accident or untoward incident, as the case may be, happened. Rule 1(2) of the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997 provides that those Rules shall come into force on the 1st day of November, 1997. Therefore, according to the Railway administration, the enhanced amount of compensation can be granted only in respect of an accident or untoward incident happened on or after 1-11-1997. In support of the above contention the learned standing counsel relied on two Full Bench decisions of this Court In *Oriental Insurance Co. Ltd. v. Sheela Ratnan* (1996) 2 Ker LT 695 : (AIR 1997 Ker 109) and *United India Insurance Co. Ltd. v. Alavi* (1998) 1 Ker LT 951. The learned standing counsel further contended that the issue involved in the present cases has not been considered by this Court in *Vijayasankar v. Union of India* (1995) 2 Ker LT 408 : (1995 AIHC 6309) or in *Anandan v. Railway Claims Tribunal* (1997) 2 Ker LT 1, the two decisions on which reliance was placed by the learned counsel appearing on behalf of the claimants. Apart from the above, it is pointed

out that the question of law decided in (1995) 2 Ker LT 408 : (1995 AIHC 6309) was left open by the Supreme Court, in its order in S.L.P. No. 1411/96.

5(a). According to the Railway administration, except in the cases which are under challenge in these appeals at the instance of the Railway administration in all other cases Railway Claims Tribunal has taken the view that the Rule as on the date of the accident should be applied for fixing the quantum of compensation. On the other hand, the learned counsel for the claimants would contend that since the provision for compensation made under the Rules is part of a beneficial legislation, it has to be given a liberal interpretation and therefore the Rule that was available at the time of assessment of the quantum of compensation. by the Tribunal should be made applicable. According to the learned counsel, the principle laid down by the Supreme Court in *Maghar Singh v. Jashwant Singh* (1998) 9 SCC 134, should be applied in the present case.

6. In (1996) 2 Ker LT 695 : (AIR 1997 Ker 109) a Full Bench of this Court considered the question whether amendment to Section 140 of the Motor Vehicles Act, 1988 by the Motor Vehicle (Amendment) Act, 1994 enhancing the quantum of compensation is applicable to claims for compensation in respect of death or permanent disablement resulting from such accident occurred prior to 14-11-1994, the date on which the Amending Act came into force. The Full Bench took the view that the liability is incurred under Section 140(1) of "the Motor Vehicles Act, 1988 and the right accrues under the above provision on the date of the accident and not on the date of consideration of the claim. Large number of decisions of the Supreme Court as well as two earlier Full Bench decisions of this Court viz., *Neeli v. Padmanabha Pillai* (1992) 2 Ker LT 807 and *National Insurance Co. v. Roy George* (1993) 1 Ker LT 308, were relied on by the Bench in coming to the above conclusion. In (1998) 1 Ker LT 951 a Full Bench of this Court considered the question whether Section 4 and 4-A of the Workmen's Compensation Act, 1923 as amended by Act 30 of 1995 enhancing the amount of compensation and rate of interest would be applicable to claims in respect of death or permanent disablement resulting from accident which occurred prior to 15-9-1995, the date on which amended provisions came into force. The Workmen's Compensation (Amendment) Act, 1995 (Act 30 of 1995) received the assent of the President on 17-8-1995. Section 1(2) of the Amendment Act provided that the Act shall come into force on such dates as the Central Government may by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of that Act. Sections 4 and 4-A as amended by the Amendment Act came into force with effect from 15-9-1995 vide Central Government notification dated 12-9-1995. Full Bench took the view that in the case of accidents happened prior to 15-9-1995 the amended provisions have no application, even though reliance was placed on behalf of the claimants on the decision of the Supreme Court in Civil Appeal Nos.

16904 to 16906/96, Full Bench distinguished the above decision and followed two earlier decisions of the Supreme Court in Pratap Narain Singh v. Srinivas Sabata, AIR 1976 SC 222, rendered by 5-Judges Bench and Maghar Singh v. Jashwant Singh, 1997 Ace CJ 517, rendered by 3-Judges Bench of the Supreme Court. It was held that no retrospective effect can be given to the amended provisions and that the amended provisions could not be applied in respect of accident or death or permanent disablement resulting from accident occurred prior to 15-9-1995.

7. Now we will refer to the two decisions relied on by the learned counsel for the claimants and examine whether those decisions are authorities for the proposition raised in these appeals. In (1995) 2 KLT 408 : (1995 AIHC 6309) a claim which is not covered by Section 124 but could be covered by Section 124-A was dismissed by the Railway Claims Tribunal on 11-10-1991 much before Section 124-A was introduced in the statute by Act 28 of 1994. Division Bench upheld the above order of the Tribunal. Then it proceeded to examine the scope of Sub-Section (1A) added to Section 13 of the Claims Tribunal Act, 1987 r/ w Section 24. It was then observed that 'Parliament has transplanted the Civil Court jurisdiction regarding all claims for compensation (relating to trains) with Claims Tribunals from 1-8-1994 onwards. Even cases which could be held in Civil Courts before that date could be entertained only by the Claims Tribunal. Similarly those cases which were in fact filed before Civil Courts prior to that date could only be dealt with by the Claims Tribunal after that date. It was then held that since the appeal was pending before this Court, and since appeal is a continuation of the original proceeding, it should be taken that when the amendment came the proceeding was pending before the Tribunal and the Tribunal will get jurisdiction by virtue of the amendment. In view of the peculiar facts of the case this Court proceeded to decide upon the quantum of compensation without remitting the matter to the Tribunal. While fixing the quantum, the provisions of Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 were applied. The question whether in the case of an accident happened in 1988, the provision of 1990 Rules could be applied or not was not raised at all. Therefore, this decision is not an authority for the proposition that the date of accident is not relevant and that the rate of compensation shall be the one as per rules in force at the time of consideration of the claim. As mentioned earlier, this decision was taken in appeal before the Supreme Court in S.L.P. No. 1411 of 1996 and even though the S.L.P. was dismissed the question of law was left open.

8. In (1997) 2 Ker LT 1 a learned single Judge has considered the effect of dismissal of an application filed before Section 124-A came into force for lack of jurisdiction to the Tribunal, on a fresh application after Section 124-A was introduced. It was held that the second application is not hit by principles of resjudicata as the first application was not dismissed on merits. It is relevant to note that in the above two decisions there is no finding that even a claim which would

be barred before a Civil Court could be filed in the Tribunal after Section 124-A was introduced.

9. In P.A. Narayanan v. Union of India, AIR 1998 SC 1659, even though a contention was raised that the provisions of Section 123(c) of the Railways Act, 1989 cannot have any application to an accident happened on 3rd January, 1981, as the above provision has not been given retrospective effect, the Apex Court did not go into that question and left the issue open. Compensation was granted to the claimant on the breach of common law duty of reasonable care which lies upon all carriers including the Railways. Therefore, this decision is of no help to us in deciding the Issue raised in these cases.

10. We do not find any merit in the contention raised by the learned counsel for the respondent in M.F.A.No. 1320/98 relying on Sub-Rule (4) of Rule 3 of the 1990 Rules. The above sub-rule reads as follows "(4) Where compensation has been paid for any injury which is less than the amount which would have been payable as compensation if the injured person had died and the person subsequently dies as a result of the injury, a further compensation equal to the difference between the amount payable for death and the already paid shall become payable."

The contention is that since payment of compensation is contemplated when death occurs subsequent to the accident, it has to be taken that the Rule that is relevant is the Rule available at the time of consideration of the claim and not at the time of the accident or untoward incident, as the case may be. It is clear from the wording of the sub-rule itself that the additional compensation is claimable on the happening of a subsequent event namely, the death of the person who was injured in the accident. It is in the nature of a second cause of action. The Rule that will be applied for finding out the quantum of compensation for death would be the Rule that was available at the time of the death. It does not mean that Rule on the date of consideration of the claim on the basis of death has to be applied for assessing the quantum. Quantum has to be assessed on the basis of the Rule which was in force at the time of the death.

11. A reference to the provision of Section 126 of the Railways Act, 1989 which provides for interim relief by the Railway administration would also make it clear that the liability of the Railway to pay compensation and the right of the claimant to receive compensation accrue on the date of the accident and not at a subsequent date. Section 126 reads as follows :--

"126. Interim relief by Railway administration-

(1) Where a person who has made an application for compensation under Section 125 desires to be paid interim relief, he may apply to the railway administration for payment of interim relief along with a copy of the application made under that section.

(2) Where, on the receipt of an application made under Sub-Section (1) and after making such inquiry as it may deem fit, the railway administration is satisfied that circumstances exist which require relief to be afforded to the applicant immediately. It may, pending determination by the Claims Tribunal of the actual amount of compensation payable under Section 124 (or Section 124-A) pay to any person who has sustained the Injury or suffered any loss, or where death has resulted from the accident, to any dependent of the deceased, such sum as it considers reasonable for affording such relief, so however, that the sum paid shall not exceed the amount of compensation payable at such rates as may be prescribed.

(3) The railway administration shall, as soon as may be, after making an order regarding payment of interim relief under sub-section (2), send a copy thereof to the Claims Tribunal. "

(4) Any sum paid by the Railway administration under Sub-Section (2) shall be taken into account by the Claims Tribunal while determining the amount of compensation payable."

12. The above provision enables the Railway administration to grant interim relief of a sum as it considers reasonable, but that sum shall not exceed the amount of compensation payable at such rates as may be prescribed. This would show that the liability to pay compensation accrues on the date of the accident at the prescribed rate on that date. The interim relief that can be granted has to be assessed on such rate and the amount cannot be more than what the claimant would ultimately get as compensation. This provision would clearly show that the basis for assessment of the quantum of compensation should be the basis that was available at the time of accident or untoward incident, as the case may be, and not at the time of assessment by the Tribunal.

13. The wording of Sub-Section (2) of Section 126 would show that the liability is saddled as soon as the accident happens, not when the quantum is determined. The wording of Section 124 and 124-A also would clearly show that the liability of the Railway administration to pay compensation arises as soon as the accident or untoward Incident, as the case may be, happens. But the quantum of compensation is to be as prescribed. Prescription is under the Rules. Therefore, it is clear that the liability to pay compensation is to the extent prescribed under the Rules in force at the time of the accident or the untoward incident, as the case may be.

14. A contention was raised by the learned Counsel for the claimant in M. F. A. No. 839 of 1998 that the non obstante Clause in Section 124 and 124A namely, 'notwithstanding anything contained in any other law' would exclude the provisions of Section 5 of the General Clauses Act also. Section 124 and 124A would clearly show that it is not the provisions of General Clauses Act that has been excluded, but reference is to the provisions of other statutes like Fatal Accidents Act, Workmen's Compensation Act, etc. Apart from the above, it can be seen that the

Amendment Rules itself provided that they shall come into force on 1st day of November, 1997.

15. There is one more common question to be considered in this case that is regarding payment of interest. We are of the view that the claimants are entitled to interest from the date of filing the petition before the Tribunal. In order to make the compensation just and fair it is only proper that interest is paid to the claimant from the date of filing the petition. A similar view was taken by a Division Bench of the Madhya Pradesh High Court in *Union of India v. Smt. Laxmipati*, AIR 1995 Madh Pra 90. It was held that even if Section 34 of C. P. C. has not been expressly made applicable to the proceedings before the Commissioner under the Indian Railways Act, 1890, there is no reason to hold that principles of Section 34, C. P. C. would be inapplicable. Court, therefore, directed payment of interest from the date of filing the petition before the Commissioner. The same view was taken by the Madras High Court in *Union of India v. Janardhanan*, AIR 1998 Mad 272. In *A.A. Haja Munuddian v. Indian Railways*, AIR 1993 SC 361, the Supreme Court had occasion to consider the question whether the provisions of the Order 33 of the C. P. C. would be applicable to the proceedings before the Railways Tribunal. It was held that although the Railway Claims Tribunal Act and the Rules thereunder do not specifically provide for the application of Order 33 of the C. P. C., there is nothing in the Act or the Rules which precludes the Tribunal from following that procedure if the ends of Justice so require. Nowhere in the Act is there any provision which runs counter to or is inconsistent with the provisions of Order 33 of the C. P. C. Same principle can be applied to hold that even though Section 34 of C. P. C. as such is not applicable, the principles contained therein can be made applicable to proceedings before the Railway Claims Tribunal.

16. In all the cases under consideration we find that the Tribunal has granted interest at the rate of 15% from the date on which the Tribunal had directed the Railway administration to make the payment. The above direction is not under challenge in these appeals. We therefore hold that the claimants will be entitled to interest at the rate of 12% p.a. from the date of the application before the Tribunal up to the date on which the compensation amount was directed to be paid by the Tribunal in addition to the interest granted by the Tribunal.

17. In the light of the above discussion, we have no hesitation to hold that the enhanced rate of compensation as per the amendment which came into force on 1-11-1997 can be applied only in respect of claims arising from accidents or untoward incidents, as the case may be, happened on or after 1-11-1997. Now we will consider the contentions raised in the individual case on the facts of each case.

18. M. F. A. No. 816/98 :- This is an appeal at the instance of the Union of India, represented by the General Manager, Southern Railway, Madras challenging the judgment of the Railway

Claims Tribunal, Ernakulam Bench in O. A. No. 137/97. The respondent is the applicant before the Tribunal. He claimed compensation for an amount of Rs. 4,00,000/- for injury sustained by him on 21-12-1996 at Kollam Railway Station while boarding Ernakulam-Trivandrum Inter City Express. The Tribunal found that the applicant was a bona fide passenger who has to travel by train No. 6341 on 21-12-1996 and that he sustained injuries when he accidentally fell down from the train due to the sudden jerk. The Tribunal further found that the incident would come within Section 123(C)(2) of the Railways Act, 1989 as amended by Indian Railways (Amendment) Act, 1994.

19. As a result of the incident the claimant sustained loss of two fingers and to undergo amputation of the right leg below knee. The Tribunal found that the above are scheduled injuries listed in Part-III of the Schedule to Rule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 and a total amount of Rs. 2,40,000/- was granted as compensation. The amount was directed to be paid on or before 20-5-1998, failing which the applicant was found entitled for interest at the rate of 15% p.a. from the date of default.

20. Even though in the memorandum of appeal contentions on the merit of the case are also taken, learned counsel for the appellant limited his arguments to grant of compensation by the Tribunal at the enhanced rate. As mentioned earlier, the accident happened on 21-12-1996. As per the Schedule under Rule 3 of the Railway Accidents (Compensation) Rules, 1990 as it stood at the time of accident, for loss of two fingers the applicant was entitled to Rs. 40,000/- and for amputation below knee with stump exceeding 5 inches the amount was Rs. 80,000/-. These amounts were enhanced to Rs. 80,000/- and Rs. 1,60,000/ only by the amendment which came into force on 1-11-1997. The learned counsel contended that the Schedule as amended by 1997 amendment which came into force only on 1-11-1997 cannot be made applicable in the case of the claimant, merely because he had delayed in filing the petition for one year. It cannot give him the benefit of the amended provision. We have already taken the view that the amendment which came into force on 1-11-1997 cannot have any application to an accident or untoward incident happened before that date.

21. In view of the above, we hold that the respondent/claimant is entitled to only Rs. 40,000/- for loss of two fingers and Rs. 80,000/- for amputation below knee with stump exceeding 5 inches. The total amount of compensation found payable by the Tribunal as Rs. 2,40,000/- is reduced as Rs. 1,20,000/-. Apart from the interest granted by the Tribunal, the respondent will be entitled to interest at the rate of 12% on the above amount from the date of filing the application before the Tribunal till the date fixed by Tribunal for payment. The Judgment of the Tribunal in O. A. No. 137/97 is modified as above.

22. M. F. A. No. 839 of 1998 :-- This appeal is against the judgment of the Claims Tribunal in O. A. No. 24/96. The applicants who are the respondents herein are the legal heirs of one Dr. T. V. Viswanathan. The applicants claim that death of Dr. T. V. Viswanathan on 19-2-1995 at Puthukad Railway station would come within Section 123(c)(2) of the Railways Act, 1989 and they are entitled to compensation under Section 124A. The Tribunal accepted the above contention and granted an amount of Rs. 4,00,000/- as compensation. The amount was directed to be paid on or before 18-4-1998, failing which the Railway administration had to pay interest at the rate of 15% p.a. from the date of default. Even though in the memorandum of appeal the appellant had challenged the finding that death of Dr. Viswanathan would come under Section 123(c)(2) in the light of the evidence in the case including the post-mortem certificate and deposition of the doctor, at the time of hearing the learned standing counsel for the Railway submitted that he is pressing only the contentions relating to the applicability of 1997 amendment to the rates under Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. In this case the untoward incident happened on 19-2-1995 and the application was filed before the Tribunal in 1996. We have already taken the view that the amended provisions can be made applicable only to the death caused pursuant to an untoward Incident happened on or after 1-11-1997 and not before the date on which the amendment came into force. If that be so, the claimants are entitled to only Rs. 2,00,000/- and not Rs. 4,00,000/-, as held by the Railway Claims Tribunal. The order passed by the Tribunal is, therefore, modified by reducing the quantum of compensation from Rs. 4,00,000/- to Rs. 2,00,000/-. We further hold that the claimants will be entitled to interest at the rate of Rs. 12% p.a. on the above amount from the date of application to the date on which the Tribunal has directed the Railway administration to pay the amount. All the other directions in the order namely, payment of interest at the rate of 15% from the date of default and rate of distribution of the amount between the claimants and the manner in which amount due to the minor children are directed to be deposited in bank and release of the amount due to the wife are retained as such.

23. M. F. A. No. 1249 of 1998 :-- The appeal by Union of India, represented by the General Manager, Southern Railway is against the judgment of the Railway Claims Tribunal, Ernakulam in O. A. No. 142/97. Respondents herein were the applicants before the Tribunal. They are the legal heirs of one Abdul Khader. It was contended before the Tribunal that the said Abdul Khader was found dead on 20-12-1996 by the side of railway track near Pallipuram Railway Station and that his death was caused as a result of an 'untoward incident' as defined in Section 123(c)(2) of the Railways Act, 1989 as amended in 1994. The Tribunal accepted the above contention and granted an amount of Rs. 4,00,000/- as compensation. Even though in the appeal several other contentions are raised, the learned standing counsel for the Railway administration pressed before Us only one contention namely, the Tribunal has committed an error in applying

the rate in the Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 as amended by Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997. According to the appellant, the above mentioned amendment came into force only with effect from 1-11-1997 and, therefore, the enhanced rate brought under the amendment should not have been applied in the case of an untoward incident happened on 20-12-1996. According to the learned counsel for the appellant, the fact that the application was filed on 19-12-97 i.e., after the amendment cannot make any difference in the legal position regarding the retrospective operation of the amendment.

24. We have already taken the view that the amended provisions In the Schedule can be made applicable only with effect from 1-11-1997. It cannot have any application for assessing the compensation in respect of death caused at an untoward incident which happened before 1-11-1997.

25. In view of the above, we modify the judgment under appeal by reducing the compensation from Rs. 4,00,000/- to Rs. 2,00,000/-. We further hold that the claimants would be entitled to interest at the rate of 12% from the date of the petition to the date on which the Tribunal had directed the Railway administration to deposit the compensation. All other directions given by the Tribunal regarding distribution of the amount among the legal heirs, depositing a portion of the same in a nationalised bank etc. and the direction to pay interest at the rate of 15% p.a. from the date of default are retained as such.

26. M .F. A. No. 1265 of 1998 : -- This is an appeal at the instance of the Union of India, represented by the General Manager, Southern Railway from the judgment of the Railway Claims Tribunal, Ernakulam in O. A. No. 136/97. Respondents were applicants before the Tribunal. They claimed an amount of Rs. 4,00,000/- as compensation on account of the death of one Srinivasan, S/o. applicants 1 and 2 and brother of applicants 3 and 4. It was alleged that the death was caused due to a fall from the train on 21-12-1996 at Kollam Railway Station and it would come under the definition of untoward incident under Section 123(c)(2). The claim petition was filed on 10-12-1997. The Tribunal accepted the contention of the applicants that the death of Srinivasan was caused in an accident defined under Section 123(c)(2) and an amount of Rs. 4,00,000/- was granted as compensation. The amount was directed to be paid on or before 16-7-1998, failing which the Railway administration had to pay interest at the rate of 15% p.a. from the date of default. Even though in the appeal several other contentions are raised, the learned standing counsel for the Railway administration pressed before us only one contention namely, the Tribunal has committed an error in applying the rates in the Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 as amended by Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997. According to the

appellant, the above amendment came into force only with effect from 1-11-1997 and, therefore, the enhanced rate brought under the amendment should not have been applied in the case of an untoward incident happened on 21-12-1996 and the application was filed before the Tribunal on 18-12-97. We have already taken the view that the amended provisions can be made applicable only to the death caused pursuant to an untoward incident happened on or after 1-11-1997 and not before the date on which the amendment came into force.

27. In view of the above, we modify the judgment under appeal by reducing the compensation from Rs. 4,00,000/- to Rs. 2,00,000/-. We further hold that the claimant would be entitled to interest at the rate of 12% from the date of the application to the date on which the Tribunal had directed the Railway administration to deposit the compensation. All other directions given by the Tribunal regarding distribution of the amount and the direction to pay Interest at the rate of 15% p.a. from the date of the default are retained as such.

28. M. F. A. No. 1282 of 1998 :-- This is an appeal at the instance of the Union of India represented by General Manager, Southern Railway and the Chief Commercial Officer (Claims), Southern Railway, Thiruchirappally. Respondents were the applicants before the Railway Claims Tribunal in O. A. No. 124/97. They are the legal heirs of one K. T. Thomas who was found dead on 24-8-1996 at Chengannur Railway Station. It was contended by the applicants that his death occurred due to an accident which would come under Section 11 (c)(2) of the Railway Act, 1989. The applicants claimed a total compensation of Rs. 4,00,000/-. The Tribunal accepted the above contention and granted an amount of Rs. 4,00,000/- as compensation. The amount was directed to be paid on or before 11-7-1989, failing which the Railway administration had to pay interest at the rate of 15% p.a. from the date of default. Even though in the memorandum of appeal several other contentions are raised, the learned standing counsel for the Railway administration pressed before us only one contention namely, the Tribunal has committed an error in applying the rates in the Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 as amended by Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997. According to the appellant, the above amendment came into force only w.e.f. 1-11-1997 and, therefore, the enhanced rate brought under the amendment should not have been applied in the case of an untoward incident happened on 24-8-1996. According to the learned standing counsel for the appellants the fact that the application was filed on 21-8-1997 i.e., after the amendment, cannot make any difference in the legal position regarding the retrospective operation of the amendment.

29. We have already taken the view that the amended provisions in the Schedule can be made applicable only with effect from 1-11-1997. It cannot have any application for assessing the compensation in respect of an untoward incident which happened before 1-11-1997.

30. In view of the above, we modify the judgment under appeal by reducing the compensation from Rs. 4,00,000/- to Rs. 2,00,000/-. We further hold that the claimants would be entitled to interest at the rate of 12% p.a. from the date of the application to the date on which the Tribunal had directed the Railway administration to deposit the compensation. The direction to pay interest at the rate of 15% p.a. from the date of default is retained as such.

31. M.F. A. No. 1284 of 1998:-- This is an appeal at the instance of Union of India, represented by the General Manager, Southern Railway, Madras challenging the judgment of the Railway Claims Tribunal, Ernakulam In T. A. No. 56/97. The respondent is the applicant. He claimed an amount of Rs. 4,00,000/- as compensation for the death of his son Mohanan who died in a Bomb blast which took place in bogie No. 7755 of Chattisgarh Express between Rajpura and Shambhu Railway Stations of Northern Railway on 10-2-1990. There was a delay of 5 years 3 months and 19 days in filing the application. The delay was condoned by an order dated 11-4-1997 in I. A. No. 23 of 1996.

32. The applicant contended that his son's death was caused due to an untoward incident as defined by Section 123(c)(l)(1) of the Railway Act, 1989 and therefore entitled to compensation under Section 124A. The Tribunal accepted the contention by holding that the amendment brought to Section 123 has retrospective effect and so also Section 124A. Reliance was placed on a decision of this Court in M. F. A. No. 1001/91-D which was reported in (1995) 2 Ker LT 408: (1995 AIHC 6309). The Tribunal granted a compensation of Rs. 4,00,000/- by applying the Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 as amended by Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997. In the earlier portion of this judgment we have discussed (1995) 2 Ker LT 408 : (1995 AIHC 6309). The above decision cannot have any application to the facts of this case. Facts of the above case would show that Act 28 of 1994 by which Section 123 was amended and Section 124A was introduced came into force which the appeal was pending before this Court and by taking recourse to Sees. 13 and 24 of the Railway Claims Tribunal Act, 1987 it was held that the Tribunal has jurisdiction to entertain a claim coming under untoward incident. The decision cannot be applied in this case where the incident happened more than 4 years before Act 24 of 1994 came into force and the application was filed 3 years thereafter. Apart from the above, the decision in (1995) 2 Ker LT 408 : (1995 AIHC 6309) when taken in appeal, Supreme Court left open the question of law even though the Section L. P. was dismissed. We are of the view that since Act 24 of 1994 came into force only on 1-8-1994 the applicant cannot contend that the death of his son on 10-2-1990 would come under untoward incident defined by Section 123(c)(l)(i). The claim is not maintainable at all also for the reason that civil suit is already barred.

33. Therefore, he cannot put forward a claim under Section 124A. We have already taken the view that the amendment to the Schedule by enhancing the rate came into force only on 1 -11 - 1997. Therefore, the petitioner cannot claim Rs. 4,00,000/- as compensation for the death of his son which happened on 10-2-1990.

34. In the result, we set aside the judgment of the Tribunal in T. A. No. 56 of 1997.

35. M. F. A. Nos. 1292 and 1293 of 1998 :-- These appeals at the instance of Union of India represented by the General Manager, Southern Railway, Madras are against the Judgment of Railway Claims Tribunal, Ernakulam Bench in O. A. Nos. 93/97 and 94/97. The applicant is a young girl aged 22 years. The facts of these cases unfurl the story of an extremely tragic experience of a young girl. The applicant after attending an interview at Thrissur was proceeding to Bangalore by Island Express. She bought a ticket from Thrissur up to Palakkad where she was to meet a relative. Since the train was late, she could not meet the relative. Therefore, she bought another ticket to continue her travel from Palakkad to Bangalore. At about 8 p.m. while she was washing her face at the wash basin near the door, soon after the train left Palakkad Railway Station, the train jerked violently, throwing her out on the track. The train ran over her right arm which was cut off and fractured her spinal cord. While she was thus lying numb on the railway track without being noticed by any body Alleppey-Madras Express ran over her resulting in amputation of her right leg below knee. The claimant filed O. A., No. 93 of 1997 claiming compensation for loss of her right arm from the shoulder and for the fracture injury of the spine, which were caused when she fell from and run over by the Island Express. O. A. No. 94/97 was filed claiming compensation for amputation of her right leg when she was run over by the Alleppey Madras Express.

36. The Tribunal granted a total amount of Rs. 4,00,000/- as compensation in O. A. No. 93/97 and Rs. 2,00,000/- in O. A. No. 94/97. The Tribunal treated the two claims separately and applied the rate contained in the Schedule as amended in 1997. In O. A. No. 93/97 for loss of right arm from the shoulder the Tribunal found that the applicant was entitled to Rs. 3.2 Lakhs and for the fracture of the spine Rs. 1.2 lakhs. But, in view of the provisions contained under Rule 4 by which total compensation payable in respect of one person was limited to Rs. 4 lakhs, the Tribunal ultimately allowed only Rs. 4 lakhs to the applicant. It is relevant to note that the Tribunal took into consideration provisions of Rule 4 as amended in 1997. In O. A. No. 94/97 the Tribunal granted an amount of Rs. 2 lakhs for amputation of the right leg below the knee with stump not exceeding 5 inches.

37. Even though several contentions on the facts of the case are taken in the memorandum of appeal, the main contention which was pressed by the learned counsel for the appellant was that

the Tribunal should not have applied the Schedule as amended in 1997. We have already taken the view that 1997 amendment has no retrospective effect, and therefore, the Amended Rules cannot apply while assessing compensation in respect of untoward incident happened on 3-9-1996. If that be so. In O. A. No. 93/97 the total compensation that could be paid is only Rs. 2,20,000/- i.e., Rs. 1.60.000/- for amputation of the arm of Rs. 60,000/- for fracture of the spine. In O. A. No. 94/97 the applicant will be entitled to Rs. 1,00,000/- as compensation for amputation of the leg below knee.

38. Yet another contention raised by the appellant, but not seriously argued was that the applicant is not entitled to bifurcate the claim into two, as she was not a passenger in the Alleppey-Madras Express. We do not find any merit in this contention. It has been found that she was a bona fide passenger in the Island Express. She lost her leg by being run over by the Alleppey-Madras Express. Merely because she did not have a ticket to travel in that train, she cannot be denied compensation under Section 124A. The injury was caused by an untoward incident as defined under Section 123(c)(2). Since the fall from Island Express and the injury sustained by Island Express running over her is a different untoward incident from the Alleppey-Madras Express running over the applicant, we do not find any illegality in bifurcating the claims and making them subject-matter of two different applications.

39. Therefore, we modify the judgment in O. A. No. 93/97 by reducing the quantum of compensation from Rs. 4,00,000/- to Rs. 2,00,000/-. since during the relevant time the highest limit provided under Rule 3 was Rs. 2.00.000/-. The judgment in O. A. No. 94 of 1997 is modified by reducing the amount of compensation from Rs. 2,00,000/- to Rs. 1,00,000/:

40. We further hold that the claimant would be entitled to interest at the rate of 12% per annum from the date of the application to the date on which the Tribunal had directed the Railway administration to deposit the compensation. The direction to pay interest at the rate of 15% per annum from the date of default is retained as such.

41. M. F. A. No. 1320 of 1998 with cross appeal :-- The appeal at the instance of Union of India, represented by the General Manager, Southern Railway, Chennai is against the judgment of the Railway Claims Tribunal, Ernakulam Bench in O. A. No. 3 of 1998. The respondent herein was the claimant. It is the case of the applicant that on 21 -9-1997 while he was boarding Malabar Express at Trivandrum Central Railway Station, he was pushed by the crowd and he fell under the train. He sustained Injuries on his forehead, above right eye, chin, leg and chest. His left hand got amputated at the, shoulder level. The Tribunal by applying the Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 as amended by the Amendment Rules 1997 granted an amount of Rs. 3,20,000/- for the amputation of the arm. The cross appeal

is directed against the Tribunal not granting any compensation for the other injuries.

42. In the appeal memorandum several contentions are raised on the merits of the claim. But, the only contention pressed before us by the learned standing counsel for the appellant was that the amendment which came into force on 1-11-1997 could not have been applied in this case when the untoward incident happened on 21-9-1997. We have already taken the view that the enhanced rate as per 1997 Amendment would be applicable only in the case of untoward incident happened on 1-11-1997 or later. As per the unamended provision the amount of compensation for the amputation of the claimant's arm would come to only Rs. 1,60,000/-.

43. We find merit in the contention taken in the cross appeal. Under issue No. 2 Tribunal has held that the applicant has proved that he sustained injuries on his forehead, above right eye, chin, leg and chest. But no compensation was granted even though a claim was made. We are of the view that the applicant is entitled to compensation under Rule 3(3) for the above injuries. Taking into consideration the nature of the injuries, we hold that an amount of Rs. 20,000/- can be granted. Thus he is entitled to a total compensation of Rs. 1,80,000/- as against Rs. 3,20,000/- granted by the Tribunal. We further hold that the claimant would be entitled to interest at the rate of Rs. 12% p.a. from the date of the application to the date on which the Tribunal had directed the Railway administration to deposit the compensation. The direction to pay Interest at the rate of 15% p.a. from the date of default is retained as such.

44. M. F. A. No. 915 of 1998 :- This appeal is at the Instance of the claimants in T. A. No. 259/96 before the Railway Claims Tribunal, Ernakulam Bench. Appellants are the legal heirs of deceased Jaleel. It was contended by the appellants that death of Jaleel was caused as a result of an untoward incident as defined under Section 123(c)(2) of the Railways Act, 1989. The Tribunal accepted the claim and granted an amount of Rs. 2,00,000/- as compensation, as against their claim for Rs.5,00,000/-. The challenge In this appeal is against limiting the compensation to Rs. 2,00,000/-. According to the appellants, the Tribunal should have granted Rs. 4,00,000/- in view of the amendment to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 in the year 1997. The appellants also contended that they are entitled to interest at least from the date of filing the application.

45. We have already taken the view that the amendment of the year 1997 has no retrospective effect and that the compensation has to be fixed on the basis of the rate provided under the unamended Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. Jaleel died on 16-6-1995. Therefore, as per the then Rules the Tribunal has correctly granted Rs. 2,00,000/- as compensation. We do not find any reason to interfere with the above finding.

46. Regarding interest, we are of the view that the appellants are entitled to interest at the rate of 12% from the date of the petition till the date on which the Tribunal directed payment of the amount in addition to the interest granted by the Tribunal at the rate of 15% in case of default. Therefore, while rejecting the contention of the appellants for enhancement of the compensation, we direct the Railway administration to pay Interest as stated above.

47. In the light of the above, we allow M. F. A. Nos. 816, 839, 1249, 1265, 1282 and 1293 of 1998 subject to the direction to pay Interest. M. F. A. No. 1292 of 1998 is partly allowed with direction to pay interest. M. F. A. No. 1320 of 1998 Is allowed and cross appeal is partly allowed with direction to pay interest. M. F. A. No. 1284 of 1998 is allowed and the judgment of the Tribunal in T. A. No. 56/97 is set aside. M. F. A. No. 915 of 1998 is partly allowed.